

California Regional Water Quality Control Board  
Santa Ana Region

July 20, 2001

ITEM: 10

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Brad Markey, 18096 Pine Avenue, Fontana, San Bernardino County

DISCUSSION:

On May 31, 2001, Brad Markey contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. Markey resides in a house located at the site. An existing subsurface disposal system is utilized for the discharge of sanitary wastes from the house. The property is just over one-half acre in size (24,000 sq. ft. or 0.55 acre net). This area of the County is unsewered and on-site septic tank-subsurface disposal systems are utilized for disposal of sanitary wastes.

Mr. Markey is constructing a full bathroom (toilet, sink, bathtub, etc.) in an unattached existing garage on the back of his property. He proposes to install an individual septic tank-subsurface disposal system to serve the bathroom. Mr. Markey proposes to install a 750-gallon septic tank-subsurface disposal system to serve this bathroom.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal use is proposed to have a minimum of one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwater's of the Region.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that, in fairness, it was necessary to distinguish between "existing" developments using subsurface disposal systems. (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, the Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval or tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to "new" developments. Mr. Markey's residence was constructed prior to the minimum lot size requirements. Consequently, the use of the existing septic tank-subsurface disposal system has been exempt from the minimum one-half acre requirement.

In adopting the MLSRs, the Board also recognized that there would likely be proposals for additions to the existing developments that would result in increased wastewater flow. The Board's MLSRs address these circumstances. Additions to existing dwellings

(bedrooms/bathrooms) are exempt from the MLSRs. However, the MLSRs state that any proposal to add any free-standing structures that would result in additional wastewater flows must be considered a “new” development. The proposed bathroom will be a free-standing structure. As such, the project as a whole (the existing house and the free-standing garage/shop/bathroom addition) must now be considered a “new” development and the one-half acre minimum lot size requirement would apply. As Mr. Markey’s lot is just a tad over one-half acre in size, staff was required to deny his request for a clearance for the project.

The intent of distinguishing between additions that are attached to existing dwellings and free-standing structures was to guard against the use of the free-standing structure as a second single family residence on the property. Mr. Markey notes that he intends to use the bathroom when he plays billiards in his garage/shop and that additional flows that would occur as a result of this project would be no greater than those that would be allowed if they were to construct an add-on to the existing house, which would be exempt from the minimum lot size criteria. However, looking to the long term, there is no way to guarantee that the garage/shop could be converted into a separate living quarter. Such a situation would result in the wastewater flow of two single-family residences on a one-half acre lot, clearly in violation of the Board’s minimum lot size requirements. The exemption criteria’s exclusion of expansion projects that are not attached to the original residence assures that this situation will not occur.

In a May 31, 2001 letter sent to staff (see Attachment “1”), Mr. Markey indicates he has secured a permit for the second septic system and has incurred costs installing ground plumbing and a cement slab.. The purpose of the bathroom in the garage/shop is to provide a convenient place for Mr. Markey when he plays billiards. Mr. Markey has assured staff that the bathroom will not be used as a second dwelling. However, recent discussions with County Building and Safety have revealed that no permits for the second septic system have been issued for this project. On June 28, 2001, County planning staff advised Board staff that Mr. Markey could proceed with his project under two options. Option 1: Connect the proposed bathroom to the existing septic tank-subsurface disposal system. Mr. Markey does not want to explore this option as the existing septic tank is located in the front of his property and would involve tearing up approximately 100 feet of concrete prior to connection. Option 2: Relocate the existing septic system closer to the back of Mr. Markey’s property and connect the existing home and proposed bathroom to this relocated septic system. Regional Board would not have any objections to either of these options.

Board staff has advised Mr. Markey of another option identified in the Board’s exemption criteria, which allows project proponents to implement an acceptable offset project. Mr. Markey could proceed with his proposed development if he connected another septic system (that would not otherwise be required to be connect to the sewer) to the sewer.

#### **RECOMMENDATION:**

Deny Mr. Markey’s request for an exemption from the minimum lot size requirements for the addition of a bathroom to his unattached existing garage.

Comments were solicited from the following agencies

State Water Resources Control Board, Office of Chief Counsel – Ted Cobb  
San Bernardino County Department of Environmental Health Services – Scott Maass  
San Bernardino County Department of Building and Safety – Leon Reed/Chayo  
San Bernardino County Department of Planning – Tina Twing